

## REMARKS

Claims 1-12 remain pending in this application with Claims 1 and 6 being independent and Claims 1, 3 and 6 being amended. Claims 13 and 14 were canceled in a previous action without prejudice and Applicants reserve the right to pursue the subject matter of the canceled claims at a later date. New Claims 15-18 are being added.

Applicants respectfully request the Examiner to reconsider the present application in view of the following remarks.

### Claims 1 and 2 Are Patentable over Kenyon in view of Koch and Davies

Claims 1 and 2 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,397,841 to Kenyon (hereinafter "Kenyon") in view of U.S. Patent No. 6,367,472 to Koch (hereinafter "Koch") and further in view of U.S. Patent No. 6,516,798 to Davies (hereinafter "Davies"). Applicant respectfully disagrees.

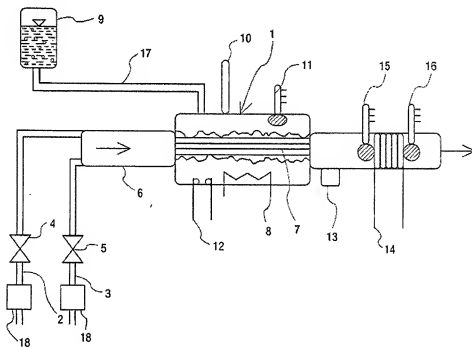
Claim 1 recites, among other limitations, "a removable filter in said gases inlet of said humidifier and downstream of said pressurized gases supply." (emphasis added). As will be explained, none of Kenyon, Koch and Davies discloses this configuration. Thus, the combination could not have disclosed, taught or otherwise suggested such a configuration and a *prima facie* case of obviousness has not been established.

The Office Action explained that "Kenyon is silent as to providing a filter in the inlet of the humidifier and downstream of the pressurized gases supply." Thus, Kenyon did not disclose the recited configuration.

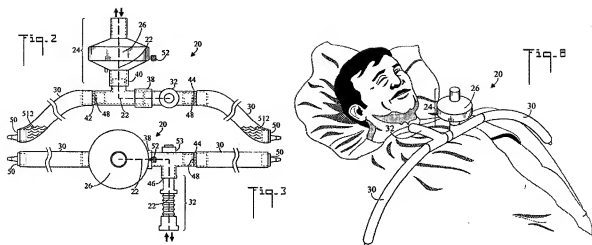
Koch was relied upon in the Office Action for allegedly teaching a humidified gases delivery apparatus that includes a filter in the inlet of the humidifier positioned such that it can filter pressurized gases entering the humidifier and protect the pressurized gases supply, humidifier and housing from contamination. The Office Action cited Col. 1, lines 53-56 for this teaching. Applicant respectfully disagrees with this interpretation of Koch.

While Koch does teach filtration, Koch teaches filtration of a water feed and filtration prior to air entering a fan. In particular, in the location of Koch cited by the Office Action, Koch teaches "[t]he **water connection to the modular respiration humidifier** according to the present invention **can be designed such that a bacteria filter is arranged at the inlet**, so that

microorganisms cannot enter even if the water bag is not connected.” *Id.* at col. 1, lns. 52-56. Koch further teaches, “**air can be drawn in from the environment by means of a fan and its temperature and humidity can be conditioned via the modular humidifier and be fed into the care area. A bacteria filter may be arranged in front of the fan [18]** in order to protect the patient from microorganisms.” *Id.* at col. 4, lns. 28-32 (emphasis added). As shown below, positioning a filter in front of the fan 18 would **not** result in a removable filter being position in the gases inlet of **said humidifier** and **downstream** of said pressurised gases supply. Thus, Koch also does not teach the recited configuration.



Davies has been relied upon by the Office Action for a teaching of a removable filter. Davies, however, also does not teach “a removable filter in said inlet of **said humidifier** and **downstream** of said pressurised gases supply.” Davies, to the contrary, teaches “tracheal humidification system (20) includes a filter (26) for humidifying the air being breathed by the patient. The filter (26) is disposed in an uppermost portion (24) of a breathing path (22).” See Abstract, *see also* Figures 2, 3 and 8 reproduced below.



Thus, none of the three references applied in the asserted combination teach “a removable filter in said inlet of said humidifier and downstream of said pressurised gases supply.” Where none of the references teaches the same singular limitation, the combination cannot be found to teach that limitation. For at least this reason, Claim 1 is not rendered unpatentable by the asserted combination.

Reconsideration and allowance of Claim 1 are respectfully requested.

Claim 2 depends from Claim 1 and is patentable over the applied combination for at least the same reasons that Claim 1 is patentable over the applied combination.

Reconsideration and allowance of Claim 2 are respectfully requested.

#### Claims 3 and 4 Are Patentable Over the Applied Combination

Claims 3 and 4 have been rejected as unpatentable over Kenyon in view of Koch, Davies, and further in view of U.S. Patent No. 7,096,864 to Mayer (hereinafter “Mayer”). Claims 3 and 4 depend from Claim 1. Applicant respectfully disagrees with the basis for the rejection.

Mayer has been relied upon for allegedly teaching a device for supplying respiratory gases which includes a humidifier as a heatable water chamber as well as a number of other recited limitations of the dependent claims. Applicant does not necessarily agree with these statements, however, because Claims 3 and 4 depend from Claim 1 and because Mayer does not disclose, among other limitations, a removable filter in said inlet of said humidifier and downstream of said pressurised gases supply,” even the addition of Mayer to the combination of Kenyon, Koch and Davies does not render Claim 1 unpatentable. Thus, because Claim 1 is patentable over the

combination asserted against dependent Claims 3 and 4, Claims 3 and 4 are patentable over the same combination for at least the same reasons.

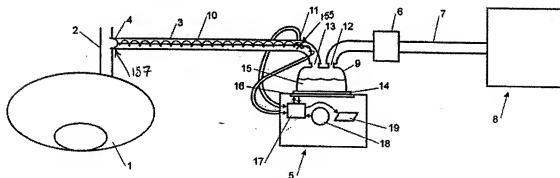
Reconsideration and allowance of Claims 3 and 4 are respectfully requested.

Claim 5 is Patentable Over the Applied Combination

Claim 5 has been rejected as being unpatentable over Kenyon in view of Koch, Davies, and further in view of International Application WO 02/32486 (hereinafter "Blackhurst"). Claim 5 depends from Claim 1. As with Mayer above, Blackhurst also fails to teach "a removable filter in said inlet of said humidifier and downstream of said pressurised gases supply." In fact, Blackhurst filters the supplied gases upstream of the inlet of the humidifier. In particular, Blackhurst teaches:

[I]nsufflator 8 preferably provides CO<sub>2</sub> gas to the filter 6, the gas is then filtered and passed via conduit 7 to the inlet 12 of the humidifier 5. The gas is humidified as it is passed through a humidifying chamber 9, which is effectively a water bath, and the gas flows out through the humidifier's outlet 13 and into the conduit 3. The gas then moves through the conduit 3 and into the patient 1 via the cannula 2, thereby inflating and maintaining the pressure within the patient's abdomen.

Blackhurst at page 7, lns 30-35 (emphasis added), *see also* Figure 1 reproduced below.



**Figure 1**

For at least this reason, Claim 1 would be patentable over the combination asserted against dependent Claim 5 and, therefore, Claim 5 is patentable over the applied combination for at least the same reasons that Claim 1 is patentable over the asserted combination.

Reconsideration and allowance of Claim 5 are respectfully requested.

Claims 6 and 12 Are Patentable Over the Applied Combination

Claims 6 and 12 have been rejected as unpatentable over U.S. Patent No. 6,398,197 to Dickinson et al. (hereinafter "Dickinson") in view of Koch and further in view of Davies.

Claim 6 recites, among other limitations, "a removable filter in, on or over said inlet to said container and downstream to any pressurised gases supply."

The Office Action states: "Dickinson is silent as to providing a filter in, on or over the inlet of the humidifier." Neither Koch nor Davies teaches a filter positioned in, on or over the gases inlet of the humidifier. Thus, none of the applied references teach at least this same limitation. Where all of the applied references fail to teach the same limitation, the combination could not have taught that limitation. For at least this reason, Claim 6 is patentable over the applied combination.

Claim 12 depends from Claim 6 and, therefore, Claim 12 is patentable over the applied combination for at least the same reasons that Claim 6 is patentable over the applied combination.

Reconsideration and allowance of Claim 6 and Claim 12 are respectfully requested.

Claims 7 and 11 Are Patentable Over the Applied Combination

Claims 7 and 11 have been rejected as unpatentable over Dickinson in view of Koch, Davies, and further in view German Patent No. DE 10,226,160 to Hoffrichter (hereinafter "Hoffrichter"), and further in view of Kenyon. Claims 7 and 11 depend from Claim 6.

Hoffrichter has been relied upon for allegedly teaching a second elongate flow tube extending into the humidifier container from the inner periphery of the gases outlet. Hoffrichter does not appear to disclose a filter and, therefore, Claim 6 would be patentable over this combination as well. Because Claims 7 and 11 depend from Claim 6, Claims 7 and 11 are patentable over this combination for at least the same reasons that Claim 6 is patentable over this combination. Reconsideration and allowance of Claims 7 and 11 are respectfully requested.

Claims 8-10 are Patentable Over the Applied Combination

Claims 8-10 have been rejected as unpatentable over Dickinson in view of Koch, Davies, and further in view of U.S. Patent No. 6,033,455 to Kurashima (hereinafter "Kurashima").

Kurashima has been relied upon for allegedly teaching a filter including a framework substantially supporting a filter material and being shaped to fit an internal shape of an inlet and

including a means to lock the filter in place in the inlet. While Applicant does not necessarily agree with these statements, Applicant submits that Kurashima did not disclose "a removable filter in, on or over said inlet to said container and downstream to any pressurised gases supply." Thus, Claim 6 would be patentable over the combination applied to Claim 8 and Claim 8 is patentable over the applied combination for at least the same reasons that Claim 6 is patentable over the applied combination.

Reconsideration and allowance of Claims 8-10 are respectfully requested.

New Claims

New claims 15-18 depend from Claim 1 and are therefore patentable not only because the claims depend from an allowable base claim, but also because the claims recite a unique combination of features not disclosed, taught, or suggested by the cited art.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully

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traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants may not have presented in all cases, arguments concerning whether the applied references can be properly combined or modified in view of the deficiencies noted above, and Applicants reserve the right to later contest whether the cited references can be properly combined or modified.

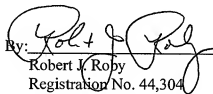
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney, in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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